



COMMONWEALTH OF KENTUCKY
ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY
STATE CAPITOL

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JUDICIAL ETHICS OPINION JE-103

October 3, 2003

Question 1: Where a judge's attorney in a pending matter or his opponent's attorney appears in front of him, must the judge automatically disqualify?

Answer 1: Yes. In such situations a judge's impartiality might reasonably be questioned. Canon 3(E)(1). The judge may, however, ask the parties and their attorneys if they wish to waive the disqualification. Canon 4(F). Judicial Ethics Opinion JE-96 Reversing is hereby modified accordingly.

Question 2: Where members of the law firm of the judge's attorney or members of the law firm of his opponents' attorneys appear in front of the judge, must he automatically disqualify?

Answer 2: No. The judge, if aware of the relationship, is required to give notice; however, because of the Commentary to Canon 3(E)(1) which states that the judge must give notice regarding anything he believes the parties and their attorneys might consider relevant to the issue of disqualification even if he does not consider the information relevant. But, once notice is given, the judge is not required to recuse. If the judge is not willing to recuse and the parties object, they have a statutory remedy.

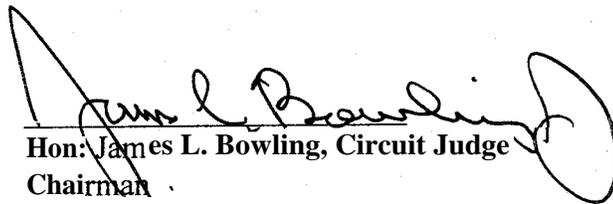
Question 3: Where a co-defendant's lawyer or another member of the law firm appears before the judge, is the judge disqualified?

Answer 3: No. But, as above, the judge, if aware of the relationship, is required to give notice. He is not required to recuse just because the parties or the attorneys want him to. Where an objection is made and judge is not willing to recuse, there is a statutory remedy.

Over the last several years, in Kentucky and elsewhere, there has been a trend for law firms to merge and the result has been very large law firms numbering 100 attorneys or more.

This has created some difficulty with regard to Code of Judicial Conduct mandates concerning the notice of disqualification where a judge is sued and he and his co-defendants choose to be represented by very large law firms. The Commentary to the Code clearly requires a judge to give notice of a potential conflict any time he believes that the parties or the attorneys might consider the information relevant even if the judge does not consider the information relevant. Even in situations where the law firms in question are very large, the Committee believes that most parties and their attorneys would consider the fact that the judge was represented by a lawyer who was a member of the law firm the attorney in front of him also belonged to had some bearing on the issue of disqualification. Therefore, even where a judge believes that he can be fair and impartial, he should provide notice of the potential conflict to give the parties an opportunity to voice an objection should they wish to do so. If the judge still believes that he can be fair and impartial, he can deny the motion to recuse and the parties may go to the Chief Justice.

The Committee does not believe, however, that a judge has the burden of reviewing every case file for potential conflicts. Rather, the judge is only required to give notice as he becomes aware of them. Because the Committee believed that the general public would regard notice as necessary even where the law firms were very large, these rules for notice of disqualification protect the appearance of impartiality and protect the judges and the judiciary from the appearance of impropriety. Certainly, no clear precedent for a more lenient notification standard was found; therefore, the Committee concluded that the Code could not be interpreted any other way. For these reasons the Judicial Ethics Committee construes the notification requirements as explained above.

A handwritten signature in black ink, appearing to read "James L. Bowling", written over a horizontal line.

Hon: James L. Bowling, Circuit Judge
Chairman

The Ethics-Committee of the
Kentucky Judiciary